

STATE OF MICHIGAN
COURT OF APPEALS

SHARON LYNN HIGGS,

Plaintiff-Appellant,

v

RICKEY LYNN HIGGS,

Defendant-Appellee.

UNPUBLISHED
February 27, 2007

No. 264469
Allegan Circuit Court
LC No. 03-034852-DM

Before: Fort Hood, P.J., and Smolenski and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment of divorce. We affirm.

After plaintiff filed complaints for divorce in December 2003, the parties entered into several stipulations regarding the marital home, child custody, child support, other marital assets, and marital debt. Among these stipulations, they agreed on the record to an equal distribution of the marital debt. The court determined that the parties' agreements represented a fair and equitable resolution of the case and stated that a judgment would be entered reflecting the parties' agreements. Several months later, plaintiff moved to restore the case to the trial docket, stating, among other things, that the parties could not agree on the distribution of marital assets and debts. Defendant countered that the parties had placed an agreement on the record and requested that the court enter a final judgment. The court concluded that, absent some sort of fraud, deceit, or mistake of fact, plaintiff did not present grounds to prevent the court from entering judgment, denied plaintiff's motion to restore the case to the trial docket, and ordered defendant to prepare a proposed judgment of divorce. Plaintiff subsequently objected to entry of defendant's proposed judgment, specifically objecting to reimbursing defendant for expenses incurred during the pendency of the interim order and to the inclusion of credit card debt incurred as of March 4, 2004, when the parties entered a stipulation into the record that plaintiff could vacate the marital home. Following several hearings, the court entered a judgment of divorce, allocating each parties' responsibilities for the payment of various debts and ordering plaintiff to reimburse defendant for some expenses related to care of the children and the marital home that occurred during the pendency of the case.

On appeal, plaintiff argues that the trial court erred in determining that the division of property was equitable. Specifically, plaintiff contends that the trial court erred in identifying and including expenses not contemplated by the parties' settlement agreement, including certain credit card debt and reimbursement expenses owed to defendant.

“In a divorce action, this Court’s review of the trial court’s factual findings is limited to clear error.” *McNamara v Horner (After Remand)*, 255 Mich App 667, 669; 662 NW2d 436 (2003). If the trial court’s findings of fact are upheld, this Court must then decide whether the dispositive ruling was fair and equitable in light of those facts. *Id.* at 670. “A dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable.” *Id.* Where a judgment of divorce is entered upon the settlement of the parties, the settlement represents a contract, which, if unambiguous, is to be interpreted as a question of law. *In re Estate of Lobaina*, 267 Mich App 415, 417-418; 705 NW2d 34 (2005). “Absent a showing of factors such as fraud or duress, courts act properly when they enforce such agreements.” *Id.* at 418.

Here, in lieu of holding a trial or hearing on the issues, the parties entered into a stipulation on the record with respect to all pending issues, including the property settlement between the parties. At the stipulation hearing, the parties agreed only that they would divide equally between themselves all the marital debt. No evidence or testimony was presented regarding the date of valuation of the marital debt, and there was no objection presented at that time regarding the issue of marital debt. In addition, plaintiff did not request a hearing on the issue of marital debt, and she specifically agreed on the record that the parties’ stipulation settled the issues regarding the division of marital assets and liabilities between the parties. On its face, the parties made a clear and unambiguous agreement that they would divide the marital debt equally.

Plaintiff now insists that the marital debt should be valued as of the date she filed her complaint for divorce rather than the time she vacated the marital home. The goal of a court when apportioning the marital estate is to equitably divide it in light of all the circumstances. *Reed v Reed*, 265 Mich App 131, 152; 693 NW2d 825 (2005). “The trial court need not achieve mathematical equality, but the trial court must clearly explain divergence from congruence.” *Id.* Setting the date of the valuation of the marital estate is within the trial court’s discretion. *Gates v Gates*, 256 Mich App 420, 427; 664 NW2d 231 (2003). In *Gates*, this Court held that the trial court did not err when it refused to permit the defendant to adjust the value and valuation dates of certain property. *Id.* The Court noted that the defendant did not request a change in valuation dates or in the amounts at trial in upholding the trial court’s decision. *Id.* Similarly, here, plaintiff did not raise any issue surrounding the valuation date or valuation of debt on the date set for trial. Rather, plaintiff entered into a stipulation that the marital debt was to be divided equally, without contesting the valuation of the marital debt.

Regardless, it appears that the property settlement, as it concerned the parties’ debts, was equitable in light of the circumstances. It is undisputed that plaintiff continued to reside in the marital home from the time she filed the complaint for divorce until March 6, 2004. Defendant’s credit card debt as of that date was valued as marital debt. As the trial court may utilize its discretion in determining the proper date to value the marital estate, no abuse of discretion occurred in the trial court’s utilization of the date plaintiff vacated the marital home since both parties presumably continued to contribute to marital expenses.¹

¹ We also note that plaintiff did not raise an objection to the credit card debt and reimbursement costs until February 10, 2005, several months after the parties placed the settlement agreement on the record.

Given this background, we are left with no other conclusion but that the trial court properly exercised its discretion regarding the valuation of credit card debt into the marital debt. The parties stipulated and agreed to equally divide the marital debt between them. The parties agreed that the stipulation would constitute the full terms of their agreement and opted against having an evidentiary hearing. The trial court entered judgment based on the parties' stipulation. The parties did not indicate on the record that valuations of debt and assets were outstanding such that an adjournment or additional discovery was necessary. Based on the plaintiff's choice to enter into a settlement agreement rather than proceed to trial, she effectively waived her position on appeal. See *Grant v AAA Michigan Wisconsin, Inc*, 272 Mich App 142, 148; 724 NW2d 498 (2006) ("A party who expressly agrees with an issue in the trial court cannot then take a contrary position on appeal"). Having found that plaintiff waived this issue on appeal and that the distribution appears to be equitable, we conclude that the trial court did not abuse its discretion by including the credit card debt into the valuation of the marital estate.

Relative to the issue of reimbursement costs, plaintiff contests the inclusion of costs for children's expenses and groceries in the amount of \$218.29, home expenses between December 2003 and March 6, 2004 in the amount of \$1,166.50, and reimbursement for medical bills in the amount of \$705.48. While plaintiff contended below that she too should be reimbursed for certain expenses, she presented no information regarding such expenses and merely argued that neither party should be reimbursed for them.

We find that plaintiff's argument that the reimbursement costs should not have been included is inherently flawed. Plaintiff has relied on language in the judgment of divorce indicating that the parties shall assume responsibility for payment of any indebtedness each has individually incurred since the date the divorce action was filed to support her argument that she should not be responsible for costs incurred by defendant during the pendency of the action. But this language includes indemnity only for those costs "individually" incurred by either of the parties. The provision does not necessarily include marital expenses incurred during the pendency of the action. As plaintiff continued to reside in the marital home through March 6, 2004, it is reasonable that there would continue to be marital expenses and/or debt during that time, relating to grocery expenses, children expenses, household expenses, and medical expenses. Plaintiff has presented nothing by way of argument or otherwise that the reimbursement expenses charged against her were incurred individually by defendant. Instead, it appears that plaintiff has asserted a narrow interpretation of the trial court's judgment while ignoring the specific language of the court's judgment. In addition, although plaintiff argues that she too should have been reimbursed for such expenses, plaintiff again has presented no evidence or calculation or other specific request for such costs. Accordingly, the trial court did not abuse its discretion in including such expenses as part of the marital debt.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Michael R. Smolenski
/s/ Christopher M. Murray